

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 3, 6-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,001,524 to Maison et al. (Maison) in view of U.S. Patent No. 4,085,616 to Patel et al. (Patel).

Maison shows dispenser (Fig. 8) with a release valve (Fig. 11) and a reservoir (10) for a source of a gaseous, gas borne or droplet substance (Col. 8, ll. 8-20). The reservoir (10) is transparent (Col. 7, ll. 75, Col. 8, ll. 1-2) so that a user can note the quantity of substance remaining in the reservoir. During use in the valve-down position (Fig. 9, Col. 7, ll. 25-28) the medicament flows away from the bottom of the reservoir and a user inverting the dispenser so it is valve up (Fig. 1) can observe the level of the substance in the bottom portion. Maison fails to disclose a minor portion in the form of a tapered tip having a comparatively small cross section.

Patel shows a reservoir (Fig. 1), comprising a minor portion (106) and a major (104) portion with the minor portion having a smaller relative cross section (Fig. 1) and the reservoir being a transparent plastic material (Col. 4, ll. 42-43). The minor portion is opposite the discharge outlet (34) and the minor portion is in the form of a tapered tip to allow for more accurate measurement of the fluid when a small volume of fluid is in the container (Col. 4, ll. 44-52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have implemented the Patel teaching of a tapered bottom reservoir with the Maison reservoir to allow for more accurate measurement of the fluid when a small volume of fluid is in the container. In the discharge outlet up position, a user can observe the level of substance in the minor portion (Fig. 1).

Regarding claim 3, Patel shows that the minor portion has a progressively diminishing cross section (Fig. 1).

Regarding claim 6-8, Maison discloses that the reservoir is a glass reservoir enclosed in an insert molded plastics material sheath (Col. 8, ll. 2-6).

Regarding claim 9, Maison discloses that the reservoir is of transparent/translucent plastics material (Col. 7, ll. 75, Col. 8, ll. 1-5).

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maison in view of Patel as applied to claim 9 above and further in view of U.S. Patent No. 3,506,004 to Mann et al. (Mann).

The Maison-Patel combination shows all aspects of the applicant's invention as set forth in claim 9, but fails to disclose the reservoir enclosed by a robust, impermeable outer enclosure. However, Mann shows a reservoir (20) enclosed in a robust, impermeable enclosure (21) to keep the reservoir free from dust and other contaminants (Col. 3, ll. 20-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the reservoir of Maison

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as modified by Patel with the enclosure of Mann to keep the reservoir isolated from dust and other contaminants.

Allowable Subject Matter

4. Claims 11, 13, 14 and 18 are allowed.

Response to Arguments

5. Applicant's arguments filed 12/12/2011 have been fully considered but they are not persuasive. The applicant argues that one having ordinary skill in the art would not have combined the Maison and Patel teachings since one is for dispensing an aerosol and one is for collecting a liquid substance. This is not found persuasive because the Patel teaching of using a tapered portion to obtain a more accurate determination of volume applies whether one is filling or emptying. Regarding the material and flexibility of the Patel device, it is noted that Patel is only being relied upon to teach the shape of the reservoir. Regarding the "use" position of Patel, it is noted that when dispensing from the outlet, the tapered end would be above the dispensing end as is required by the claim.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/D. R. S./
Examiner, Art Unit 3754

/KEVIN P. SHAVER/
Supervisory Patent Examiner, Art
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